

# Supreme Court of Florida

**STATE OF FLORIDA,**  
Petitioner,

vs.

**FORRESTINE SIMS,**  
Respondent.

No. 91,073

[October 15, 1998]

SHAW, J.

We have for review a decision<sup>1</sup> of the district court that cited as controlling authority State v. Ellis, 22 Fla. L. Weekly D1298 (Fla. 1st DCA May 22, 1997), which was then pending on review in this Court. We have jurisdiction. Art. V, § 3(b)(3), Fla. Const.; Jollie v. State, 405 So. 2d 418 (Fla. 1981).

Sims was charged with perjury for allegedly lying in a deposition concerning her role in an armed robbery. The trial court found the perjury statute, section 837.011(3), Florida Statutes (1995),

unconstitutional, reasoning that the statute removes an element of the offense, i.e., materiality, from the jury's consideration. The district court denied certiorari based on Ellis. We have since quashed Ellis. See State v. Ellis, No. 90,729 (Fla. Oct. 15, 1998).

We quash the decision under review.

It is so ordered.

HARDING, C.J., and OVERTON,  
KOGAN, WELLS, ANSTEAD and  
PARIENTE, JJ., concur.

NOT FINAL UNTIL TIME EXPIRES  
TO FILE REHEARING MOTION,  
AND IF FILED, DETERMINED.

Application for Review of the Decision  
of the District Court of Appeal -  
Statutory Validity

First District - Case No. 97-2193

Robert A. Butterworth, Attorney  
General, James W. Rogers, Tallahassee  
Bureau Chief, Criminal Appeals, and  
Stephen R. White, Assistant Attorney  
General, Tallahassee, Florida,

---

<sup>1</sup> State v. Sims, No. 97-2193 (Fla. 1st DCA June 23, 1997).

Thomas G. Fallis, Jacksonville,  
Florida,

for Respondent